IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 246 of 2003
To
COMPANY PETITION No. 249 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRASHANT RAJGARHIA BY AND THR.NISHANT RAJGARHIA - Petitioner(s)
Versus
AJWA FASHIONS LTD. - Respondent(s)

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Appearance :
MR TS NANAVATI for Petitioner(s) : 1,
MR PRABHAV A MEHTA for Respondent(s) : 1,
MR PRADYOTSEN SHUKLA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/11/2006

COMMON ORAL JUDGMENT

1. All these Company Petitions are filed by the respective petitioners for an appropriate order

of winding up of the respondent company i.e. M/s. Ajwa Fashions Limited under the provisions of the Companies Act; 1956.

2. It is the contention on behalf of the respective petitioners that an amount of Rs. 4 Lacs, which was paid to the respondent company by way of loan by cheque was due and payable to the petitioner of Company Petition No. 246 of 2003. Similarly, an amount of Rs. 5 Lacs each was due and payable to the petitioners of Company Petition Nos.247 of 2003 to 249 of 2003 respectively. It is also the case on behalf of the respective petitioners that the Director of the respondent company also executed promissory note for and on behalf of the respondent company. That inspite of repeated request and demand, the aforesaid amounts were not paid and the cheques issued by the Director of the respondent company were bounced for which, criminal complaints under Section 138 of the Negotiable Instrument Act are also pending before the Competent Court. That the statutory

notices were served upon the respondent company as required under Sections 433 and 434 of the Companies Act; 1956 and inspite of service of the same, neither there was any reply to the same nor the aforesaid amounts were paid and therefore, it is requested to pass an appropriate order of winding up of the respondent company.

3. Shri T.S.Nanavati, learned advocate appearing for the petitioners has submitted that the respondent company is closed. The factum of issuing the cheques and subsequently bounced were also mentioned in the statutory notice, however, there was no reply to the statutory notice and even the aforesaid amounts are also not paid. In fact, the applications for discharge were submitted before the trial Court, however, the same also came to be dismissed. It is submitted that the company is totally closed and not in a position to pay the debts to its creditors inclusive of the petitioners and the company has lost its financial substratum and it

is requested to order for the winding up of the respondent company.

4. The petitions are opposed by the respondent company. An affidavit-in-reply, sur-rejoinder to the affidavit-in-rejoinder and further affidavits are filed on behalf of the respondent company. Initially, in the affidavit-in-reply, it was submitted on behalf of the respondent company that there was no any transaction between the respondent company and the petitioners and in view of the fact that there was no such amount which was taken by the company, the present Company Petitions are not maintainable as like the amount, nothing has been paid to the company. In response to the said affidavit-in-reply, an affidavit of the petitioner in rejoinder came to be filed and along with the rejoinder, certificate issued by the Indian Overseas Bank to the effect that the cheques were issued in favour of the M/s. Ajwa Fashions Limited and it has been paid through cash on 16.7.2002 and the said cheques were in

favour of M/s. Ajwa Fashions Limited was also produced. Along with the rejoinder, promissory note signed by the Authorized Signatory/Director for and on behalf of M/s. Ajwa Fashions Limited is also produced. Along with the rejoinder, the cheques issued by the Director, which were subsequently bounced are also produced. That thereafter further affidavit came to be filed on behalf of the respondent company that the amount might have been paid to the Director and the promissory note is not executed for and on behalf of the respondent company and the cheques issued by the Director are not for and on behalf of the respondent company. It is submitted that the petitioners have failed to establish consideration in respect of the said promissory note alleged to have been executed by Shri Dugar, Director of the respondent company and therefore, it is requested to dismiss the present Company Petitions. Shri Prabhav Mehta, learned advocate appearing for the respondent company has submitted that failure to discharge debts or reply after service of statutory

notice, winding up order cannot be passed automatically if company raises bonafide disputes regarding liability. It is submitted that in the present case, there are serious bonafide disputes regarding liability of the respondent company and the alleged debts in favour of the petitioners and therefore, it is requested to dismiss all the Company Petitions.

5. Heard the learned advocates appearing on behalf of the parties.

6. On going through the relevant records, it appears to the Court that the disputes raised by the respondent company are not bonafide. Initially, by filing affidavit-in-reply, it was specifically denied having any transaction between the respondent company and the petitioners and it was disputed that any such amount was taken by the company. However, in response to the same, when the rejoinder was filed and promissory note executed by the

Director were produced and other relevant documents were produced such as, certificate issued by the Bank showing the payment by the petitioners to the company and the cheques issued by the Director which were subsequently bounced, the respondent company filed further reply by submitting that the promissory note alleged to have been executed is not for and on behalf of the company. On going through the promissory note, it is crystal clear that the said promissory note is for and on behalf of the company. Thus, the disputes raised by the respondent company are not bonafide and it appears that only with a view to avoid any further order, such a false defense has been taken by the respondent company. It is to be noted that in the statutory notice itself there is a reference to the cheques issued by the Director for and on behalf of the respondent company, which were subsequently bounced, however, the respondent company choses not to file the same. It is also not the case on behalf of the respondent company that the execution of

the promissory note is by compulsion or force. The complaints under Section 138 of the Negotiable Instrument Act are filed against the company.

7. It appears that the respondent company is closed. Original notice to the respondent issued by this Court could not be served by the petitioners as the respondent was not traceable at the given address in the petition and therefore, the petitioners were permitted to serve the notice by affixing it at the last known address and accordingly, the respondent came to be served. It is also required to be noted that initially, Nanavati Associates filed their appearance on behalf of the respondent company, however, as the respondent company was not responding to them and had not given any instruction, they retired from the matter and they were permitted to retire by this Court on production of letter dated 19th April, 2005 and thereafter, Shri Mehta, learned advocate appeared for the respondent company who also

appears on behalf of the Nanavati Associates. Be that as it may, the company is closed and nothing has been mentioned in the reply that the respondent company is a running company and/or profit making company. On the contrary, as stated above, the respondent company has tried to raise the disputes without any substance and as stated above, the disputes are not bonafide. Thus, the respondent company has neglected to pay the debts of the petitioners. Considering the provisions of Sections 433 and 434 of the Companies Act, the company is required to be ordered to be wound up. Advertisement of admission of the present Company Petitions and final hearing came to be published in two local newspapers as ordered by this Court and the affidavit to that effect has also been filed. There is no any objection received against granting of the relief in the present Company Petitions and against winding up of the respondent company. Considering the above, it appears that the respondent company has lost its financial substratum and is not in a position to

revive. The respondent company has also not come out with any proposal to make the payment nor have paid any amount to the petitioners.

8. Under the circumstances and for the reasons stated above, the respondent company i.e. M/s. Ajwa Fashions Limited is ordered to be wound up. The Official Liquidator attached with this Court is appointed as Official Liquidator for the respondent company. The Official Liquidator is hereby asked to take possession of the properties (movable and immovable) of the respondent company along with bank accounts, cash and account books, etc., the Official Liquidator shall submit its report within a period of 3 months. If required, he can take services of the official valuer for the purpose of preparation of the possession note, etc. These petitions are accordingly allowed. No costs.

[M.R.SHAH, J.]

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